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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-794*

13 **DARYL KENT MCKAY**
6130 Monterey Road, Apt. 208
San Jose, CA 95138

ACCUSATION

14 **Registered Nurse License No. 583814**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about July 23, 2001, the Board of Registered Nursing issued Registered Nurse
23 License Number 583814 to Daryl Kent McKay ("Respondent"). The Registered Nurse License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
3 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
4 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
5 Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
8 licensee or to render a decision imposing discipline on the license.

9 DISCIPLINARY STATUTES

10 6. Section 2761 of the Code states:

11 "The board may take disciplinary action against a certified or licensed nurse or deny an
12 application for a certificate or license for any of the following:

13 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

14 (1) Incompetence or gross negligence in carrying out usual certified or licensed nursing
15 functions.

16 ..."

17 7. California Code of Regulations, title 16, section 1442, states:

18 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
19 the standard of care which, under similar circumstances, would have ordinarily been exercised by
20 a competent registered nurse. Such an extreme departure means the repeated failure to provide
21 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
22 situation which the nurse knew, or should have known, could have jeopardized the client's health
23 or life."

24 8. Code section 2762 states:

25 "In addition to other acts constituting unprofessional conduct within the meaning of this
26 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
27 chapter to do any of the following:

28 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed

1 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
2 administer to another, any controlled substance as defined in Division 10 (commencing with
3 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
4 defined in Section 4022.

5
6 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
7 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
8 section."

9 9. Code section 4022 states:

10 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-
11 use in humans or animals, and includes the following:

12 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
13 prescription," "Rx only," or words of similar import.

14 (b) Any device that bears the statement: "Caution: federal law restricts this device to
15 sale by or on the order of a -----," "Rx only," or words of similar import, the blank
16 to be filled in with the designation of the practitioner licensed to use or order use of
17 the device.

18 (c) Any other drug or device that by federal or state law can be lawfully dispensed
19 only on prescription or furnished pursuant to Section 4006.

20 10. Code section 4060 states, in pertinent part:

21 No person shall possess any controlled substance, except that furnished to a person
22 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
23 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order
24 issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner
25 pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a
26 naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either
27 subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph
28 (5) of, subdivision (a) of Section 4052 . . .

COST RECOVERY

23 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
27 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
28

1 included in a stipulated settlement.

2 MEDICATIONS AT ISSUE

3 12. Morphine Sulfate is an opioid used for the treatment of moderate to severe pain. It is
4 a Schedule II controlled substance pursuant to Health and Safety Code section 11055(B)(1)(M)
5 and a dangerous drug pursuant to Business and Professions Code section 4022.

6 13. Versed is a brand name for Midazolam and used for sedation. It is a Schedule IV
7 controlled substance pursuant to Health and Safety Code section 11057(d)(21) and a dangerous
8 drug pursuant to Business and Professions Code section 4022.

9 STATEMENT OF FACTS

10 14. At all relevant times, Respondent was employed as a Critical Care Transport Nurse
11 ("CCT-RN") with Westmed Ambulance Company, ("Westmed") Hayward, California.

12 15. Respondent's duties included driving a support vehicle called the Quick Response
13 Vehicle ("QRV") that contained critical care transport equipment and medications used to
14 transport critically ill patients. The QRV contained a locked drug box with the controlled
15 substances Morphine Sulfate and Versed.

16 16. Respondent would drive the QRV to meet a Westmed Ambulance, at which point he
17 would transfer the necessary critical care transport equipment and medications. Upon completion
18 of a patient transfer and his return to the QRV, Respondent pursuant to Westmed's Standard
19 Operating Procedure was required to secure any unused controlled substances back into the
20 secured lock box.

21 17. On or about July 4, and August 14, 2009, Respondent failed to ensure that the
22 controlled substances Morphine Sulfate and/or Versed were secured in the locked drug box inside
23 of the QRV, after his completion of a transport.

24 18. On or about January 19, 2010, Respondent was assigned to transport a critically ill
25 patient from Alta Bates Summit Medical Center ("Alta Bates") in Berkeley to Eden Medical
26 Center ("Eden") in Castro Valley. The transported patient was a 52 year-old male who presented
27 to Alta Bates with signs and symptoms of an intracranial hemorrhage. He was being transferred
28 to the neurological ICU at Eden. At the time of transport, the patient was on a ventilator and was

1 receiving intravenous solutions. Prior to leaving Alta Bates, Respondent requested and received a
2 pre-mixed bag of Versed from the nursing staff without a physician's order. Respondent failed to
3 document on Westmed's patient care report receipt of this pre-mixed bag of Versed.

4 19. At approximately 5:25 a.m., while en route to Eden, Respondent drew up five (5) or
5 six (6) milliliters from the pre-mixed bag of Versed into a syringe and administered it
6 intravenously to the patient. On the patient care report, he documented that he gave 2.0
7 milligrams of Versed, without indicating that it was from the pre-mixed bag of Versed.
8 Respondent also failed to document on the patient care report the reason(s) for administration of
9 the Versed and failed to document the patient's response.

10 20. At Eden, Respondent did not turn over the bag of Versed to the hospital staff.
11 Instead, he left it unattended in the ambulance while the patient was taken into the receiving
12 hospital and upon return to the QRV he threw it in the back of the vehicle. At a later unknown
13 date and time, Respondent threw out the unused pre-mixed bag of Versed in a public dumpster.¹

14 FIRST CAUSE FOR DISCIPLINE

15 (Gross Negligence --Possession of Controlled Substance
16 Without a Physician Order)

17 21. Respondent is subject to discipline for gross negligence pursuant to Code section
18 2761, subdivision (a)(1), as defined in section 2762, subdivision (a), in that on or about January
19 19, 2010, he obtained possession of the controlled substance Versed, without a physician's
20 order. The facts in support of this cause for discipline are set forth above in paragraph 18.

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22 ///

23 ¹ WestMed's Controlled Substances Policies and Procedures provided in relevant part
24 that "Any unused controlled substance remaining following the care of a CCT [critical care
25 transport] patient shall be released to the physician, RN or MICN [mobile intensive care nurse]
26 accepting the patient, for possible administration at a later time. The CCT-RN must note on the
27 PCR [patient care report] the name of the physician, RN or MICN accepting the unused portion of
28 the medication. If the unused portion of the controlled substances is not released to the physician,
RN or MICN accepting the patient, for possible administration, the unused portion of the
controlled substance must be discarded by the CCT-RN and witnessed by a physician, RN or
MICN accepting the patient. The wasted medication, including the amount wasted, must be
documented on the PCR and signed by both the CCT-RN and the physician, RN or MICN.

1 also failed to document that any approved medical and/or nursing provider witnessed his disposal
2 of this controlled substance. The facts in support of this cause for discipline are set forth above in
3 paragraph 20.

4 SIXTH CAUSE FOR DISCIPLINE

5 (Unprofessional Conduct – Failure to Keep Controlled Substances Secured)

6 26. Respondent is subject to discipline for unprofessional conduct pursuant to Code
7 section 2761, subdivision (a), as on July 4, 2009, August 14, 2009, and January 19, 2010, he
8 failed to ensure that controlled substances were secured in the QRV. The facts in support of this
9 cause for discipline are set forth above in paragraphs 15 through 17 and paragraph 20.

10 SEVENTH CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct – Violation of Westmed's Policies and Procedures)

12 27. Respondent is subject to discipline for unprofessional conduct pursuant to Code
13 section 2761, subdivision (a), in that he violated his employer Westmed's policies and procedures
14 regarding obtaining, administering, securing, disposal and charting related to and/or referring to
15 controlled substances. The facts in support of this cause for discipline are set forth above in
16 paragraphs 15 through 20.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board of Registered Nursing issue a decision:

20 1. Revoking or suspending Registered Nurse License Number 583814, issued to Daryl
21 Kent McKay;

22 2. Ordering Daryl Kent McKay to pay the Board of Registered Nursing the reasonable
23 costs of the investigation and enforcement of this case, pursuant to Business and Professions
24 Code section 125.3; and

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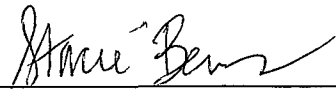
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3. Taking such other and further action as deemed necessary and proper.

DATED: MARCH 19, 2013


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2012203993